

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 6, 2008 Session

ROGER MOON v. DALE KEISLING

Appeal from the Chancery Court for Fentress County
No. 01-58 Billy Joe White, Chancellor

No. M2008-00316-COA-R3-CV - Filed September 24, 2008

The defendant in an action to quiet title to real property appeals the trial court's dismissal of his Counter-Complaint. An Order of Summary Judgment in favor of the plaintiff that was dispositive of all issues in the action to quiet title had been entered months before the defendant made his motion to amend his answer and to file a counter-complaint. In the post-judgment motion, the defendant contended that the issues he desired to raise in the proposed Amended Answer and Counter-Complaint had been raised but not resolved by the trial court. The trial court granted the motion to amend. Subsequently, the trial court dismissed the Counter-Complaint finding that it raised no new issues. We have determined the Order of Summary Judgment resolved all issues between the parties and no motions for relief pursuant to Tenn. R. Civ. P. 59 or 60 had been filed. Therefore, the Order of Summary Judgment became a final, non-appealable judgment thirty days after its entry. Once the Order became a final, non-appealable judgment, the trial court lacked jurisdiction to entertain the defendant's motion to amend or to consider any issues arising from the amended pleadings. We, therefore, hold that the Order of Summary Judgment entered on April 18, 2005 is the final judgment in this matter. We also vacate the order granting the defendant's motion for leave to amend his pleadings and remand with instruction for the trial court to enter an order denying Keisling's oral motion to amend and striking his Answer and Counter-Complaint.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Vacated

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

Harold E. Deaton, Jamestown, Tennessee, for the appellant, Dale Keisling.

Phillips M. Smalling, Byrdstown, Tennessee, for the appellee, Roger Moon.

OPINION

This is a simple action to quiet title to 74 acres of land in Fentress County. The dispute between the parties arose when the plaintiff, Roger Moon, learned that Dale Keisling possessed a quitclaim deed that placed a cloud on the title to Moon's property. Thereafter, Moon filed the

underlying action to quiet title on October 1, 2001. In the Complaint, Moon made express reference to and attached a copy of the surveyor's Plat of his property, which was on file with the Register's Office of Fentress County. The defendant, Dale Keisling, filed an Answer denying the assertions in Moon's petition, insisting instead that he had acquired title to the property pursuant to a quitclaim deed. Keisling did not raise any affirmative defenses in his Answer and he did not assert a counter-complaint.

Four months later, on February 14, 2005, Moon moved for summary judgment. Pursuant to an order entered on April 18, 2005, the trial court granted Moon's motion for summary judgment, finding that Keisling's quitclaim deed was a cloud on Moon's title and Moon was entitled to judgment as a matter of law. No appeal was taken and no motions were filed to set aside or to seek relief from the Order of Summary Judgment prior to it becoming a final, non-appealable judgment.

On November 22, 2005, six months after the Order of Summary Judgment became a final, non-appealable judgment, Keisling's counsel¹ presented an oral motion during an unrelated proceeding to obtain leave of court to amend Keisling's original Answer and to file a Counter-Complaint. On December 8, 2005, the trial court entered an order stating that all issues in the original complaint and answer had been fully adjudicated and ruled upon; however, the trial court granted Keisling leave to amend. In its order, the trial court expressly stated that any issues raised by Keisling would have to be outside the scope of the summary judgment.

In his Amended Answer and Counter-Complaint, Keisling asserted that the location of the property was still in dispute and argued that Moon's deed had an incorrect call. On January 8, 2008, the trial court dismissed the Answer and Counter-Complaint upon finding that the issues presented by Keisling were not outside the scope of the summary judgment and the summary judgment was a final judgment from which no appeal had been taken. This appeal followed.

ANALYSIS

"A final judgment is a judgment that resolves all claims between all parties, 'leaving nothing else for the trial court to do.'" *King v. Spain*, No. M2006-02178-COA-R3-CV, 2007 WL 3202757, at *8 (Tenn. Ct. App. October 31, 2007) (citing *State ex rel. McAllister v. Good*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). Until a judgment becomes final and non-appealable, the trial court retains jurisdiction over all matters at issue and the trial court retains control over its orders, which may be modified by the trial court any time prior to the entry of a final judgment. *Hodge v. Hodge*, No. M2006-01742-COA-R3-CV, 2007 WL 3202769, at *4 (Tenn. Ct. App. October 31, 2007) (citing *Hoalcraft v. Smithson*, 19 S.W.3d 822, 827-28 (Tenn. Ct. App. 1999)). However, "[o]nce a judgment . . . becomes a final judgment, the trial court loses the right to exercise control over it due to the fact that the judgment is final for the purpose of appeal and final as *res judicata* upon the facts

¹Keisling engaged new counsel after summary judgment was entered. It was his new counsel who made the oral motion to amend.

then existing.” *Id.* at *3 (citing *Hicks v. Hicks*, 176 S.W.2d 371, 374-75 (Tenn. 1943); *Darty v. Darty*, 232 S.W.2d 59, 62 (Tenn. Ct. App. 1949)).

The denial of summary judgment is not an adjudication on the merits and has no *res judicata* effect. *Harrogate Corp. v. Systems Sales Corp.*, 915 S.W.2d 812, 816 (Tenn. Ct. App. 1995) (citing *Galbreath v. Harris*, 811 S.W.2d 88, 91 (Tenn. 1990)); see *Disney v. Celotex Corp.*, 588 F. Supp. 1317, 1318-19 (E.D. Tenn. 1984). “[T]he granting of summary judgment is deemed conclusive of all issues reached and decided by such summary judgment.” *Id.* (citing *Galbreath*, 811 S.W.2d at 91).

In the case at bar, which is an action to quiet title to the plaintiff’s property, the Summary Judgment Order issued on April 18, 2005, decided all matters at issue. Keisling took no action to appeal or challenge the Order of Summary Judgment during the thirty days following the entry of the Order. A party has thirty days in which to file a notice to appeal, *See* Tenn. R. App. P. 4(a) and thirty days in which to file a Tenn. R. Civ. P. 59 motion, which is the only motion contemplated in the rules for extending the time for taking steps in the regular appellate process. *See* Tenn. R. Civ. P. 59. The motions to which Rule 59 is applicable are: “(1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 59.02 for a new trial; or (4) under Rule 59.04 to alter or amend the judgment.” Tenn. R. Civ. P. 59.01. Keisling did not file a notice to appeal and did not file a Rule 59 motion. Accordingly, the Order of Summary Judgment that was entered on April 18, 2005 became, and thus is, a non-appealable final judgment. *See American Steinwinter Investor Group ex rel. American Steinwinter v. American Steinwinter*, 964 S.W.2d 569, 571 (Tenn. Ct. App. 1997) (stating that the 30-day rule for notices of appeal is “mandatory and jurisdictional”).

With the exception of relief that may be available pursuant to Tenn. R. Civ. P. 60, once the Order of Summary Judgment, which resolved all claims between Moon and Keisling, became a final judgment, the trial court no longer had jurisdiction over the matter. *See King*, 2007 WL 3202757, at *8 (citing *State ex rel. McAllister*, 968 S.W.2d at 840). The only relief that may have been available to Keisling thereafter would have been pursuant to Tenn. R. Civ. P. 60.

On motion and upon such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of

a judgment or suspend its operation, but the court may enter an order suspending the operation of the judgment upon such terms as to bond and notice as to it shall seem proper pending the hearing of such motion. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court. Writs of error coram nobis, bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Tenn. R. Civ. P. 60.02. Keisling, however, did not file a Rule 60 motion for relief from a final judgment and none of the factors cited in the rule are applicable to the matter at issue.

We addressed a similar jurisdictional issue in the matter of *Hodge v. Hodge*, 2007 WL 3202769. In that matter, the parents of three minor children had previously obtained a divorce, and a parenting plan was incorporated in the Final Decree of Divorce. *Id.* at *1. As of June 10, 2003, all issues in dispute between the parties had been resolved by appropriate orders; thus, nothing remained for the court to address. *Id.* Nearly two years after the decree had become a final, non-appealable judgment, and without the filing of a complaint or petition to invoke the trial court's jurisdiction, the trial court signed an Order of Reference appointing a Special Master to oversee apparent conflict between the parents concerning the parenting of their children. *Id.* at *1-2. The mother challenged the Order on various grounds in the trial court to no avail and an appeal followed. *Id.* at *2.

On appeal, this court determined that the order entered in June of 2003 constituted a final judgment of all matters at issue in the divorce action and no unresolved issues remained. *Id.* at *2. We also determined that neither of the parents had filed a pleading or complaint to invoke (re-activate) jurisdiction.² Accordingly, we held that once the June 2003 order became a final, non-appealable judgment, the trial court lacked jurisdiction to exercise control over the matter. *Id.* at *4. Courts can only act upon matters that are properly brought before them pursuant to "the settled law, practice and usage." *Randolph v. Jenks v. Merchants' Nat'l Bank*, 77 Tenn. 63, 68 (Tenn. 1882). That was not the case in *Hodge*. "Orders issued by a court without jurisdiction are void, and we are under an affirmative duty to vacate void orders without reaching the merits of the issues on appeal." *Hodge*, 2007 WL 3202769, at *2 (citing Tenn. R. App. P. 13(b); *First American Trust Co. v. Franklin-Murray Dev. Co. L.P.*, 59 S.W.3d 135, 141 (Tenn. Ct. App. 2001)). Accordingly, we vacated the 2005 Order of Reference as being void due to a lack of jurisdiction. *Id.* at *4.

In this case, the Order of Summary Judgment resolved all matters at issue and it became a final, non-appealable judgment thirty days after April 18, 2005. Once the Order of Summary Judgment became a final judgment, the trial court no longer had jurisdiction to grant either party leave to amend his pleadings. As stated above, orders that are issued without jurisdiction are void

²In final judgments in domestic actions, a trial court's jurisdiction can be invoked by filing either a petition with a revised parenting plan under Tenn. Code Ann. § 36-6-405 or by filing a Tenn. R. Civ. P. 60 motion. *See Hodge*, 2007 WL 3202769, at *4.

and we are under an affirmative duty to vacate void orders without addressing the merits of the issues on appeal. *Hodge*, 2007 WL 3202769, at *2 (citing *First American Trust Co.*, 59 S.W.3d at 141). The order issued by the trial court on December 8, 2005 is void and all actions taken by the trial court in furtherance of that order are also void.

We therefore vacate the order granting Keisling leave to amend his pleadings and remand with instruction for the trial court to enter an order denying Keisling's motion to amend his pleadings and striking his Answer and Counter-Complaint. Costs of appeal are assessed against Dale Keisling, Appellant.

FRANK G. CLEMENT, JR., JUDGE